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Group - Washington

May 19, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *Gen. Docket No. 93-252, Regulatory Treatment of Mobile Services*

On behalf of Pacific Bell, please find enclosed an original and six copies of its "*Petition For Clarification or Reconsideration*" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)
_____)

GN Docket No. 93-252

PETITION FOR CLARIFICATION OR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules,¹ Pacific Bell requests the Commission to reconsider its Second Report and Order in Gen. Dkt. No. 93-252, released March 7, 1994 (Order) to the extent the Order implies that the Part 64 accounting safeguards applicable to nonregulated services apply to commercial mobile radio services ("CMRS") including PCS which are regulated. Pacific Bell also seeks clarification of the application of Part 32 Uniform System of Accounts to a CMRS subsidiary of a local exchange company ("LEC").

I. CMRS ARE REGULATED SERVICES, THUS, NONREGULATED ACCOUNTING TREATMENT SHOULD NOT APPLY

Pacific Bell intends to provide PCS service through a subsidiary that will engage in certain activities with Pacific Bell on an integrated basis. This will permit our PCS offering to take advantage of the economies of scope that bring value to

¹ 47 C.F.R. §1.429.

the public. This benefit to the public interest has been recognized by the Commission in its decision not to require structural separation.²

Paragraph 218 of the Order states that in its "Broadband PCS Order the Commission decided to impose accounting safeguards, but not structural separation, for PCS providers affiliated with local exchange carriers, including Bell Operating Companies."³ The Commission concludes that it will apply the same accounting safeguards to all CMRS providers that it adopted in the PCS proceeding.⁴ Pacific Bell asks the Commission to clarify that CMRS providers, including PCS providers that are LECs or are LEC affiliates, should be subject to the Part 64 accounting safeguards only to the extent that they also engage in nonregulated activities or engage in transactions with nonregulated affiliates. Specifically, the Part 64 cost allocation rules would only apply to separate costs of regulated and nonregulated activities of our subsidiary providing CMRS, including PCS.⁵ Similarly, our CMRS subsidiary should only be subject to the Part 64 affiliate transaction rules to the extent it has transactions with nonregulated

² Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Dkt. No. 90-314, Second Report and Order, 8 FCC Rcd. 7700, para. 126 (1992).

³ Order, para. 218.

⁴ Id., citing to Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Dkt. No. 90-314, Second Report and Order, 8 FCC Rcd. 7700, para. 126 (1993).

⁵ 47 C.F.R. §64.6901.

affiliates.⁶ Part 64 accounting safeguards do not apply and should not be made to apply among regulated services or to transactions between regulated affiliates.

The Commission has designated CMRS, including PCS, as regulated services. Part 64 rules do not allocate costs among regulated services. The cost allocation rules are used to separate the costs of nonregulated services from regulated services. Thus, if a LEC provides regulated CMRS, Part 64 cost allocation rules would not apply to separate those costs from the costs of other regulated services. If CMRS are provided by an affiliate of a LEC, separate books of accounts for each entity will provide for accounting separation. Consequently, Part 64 cost allocation rules are unnecessary for the CMRS subsidiary.⁷

If CMRS is provided by an affiliate, the regulated CMRS affiliate may engage in transactions with other regulated or nonregulated affiliates. The Part 64 affiliate transaction rules do not apply to transactions between regulated affiliates.⁸ Transactions between the CMRS affiliate and other

⁶ 47 C.F.R. §64.902.

⁷ Different accounting treatment may be required by state regulators for state accounting purposes.

⁸ Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987); on recon., 2 FCC Rcd 6283 (1987), para. 122; Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and Their Nonregulated Affiliates, CC Docket No. 93-251, Notice of Proposed Rulemaking, released October 20, 1993, para. 106.

regulated affiliates, such as LECs, should not be subject to the Part 64 affiliate transaction rules.

On the other hand, CMRS affiliate transactions with nonregulated affiliates would be governed by the Part 64 affiliate transaction rules. The Commission's statement in paragraph 218 that refers to accounting safeguards that "ensure that costs of non-regulated affiliates are not passed to and included as costs of the local exchange carrier" can only be understood in the context of transactions between a regulated CMRS provider (whether a LEC or a separate regulated affiliate) and nonregulated affiliates. To apply the Part 64 accounting safeguards in any other situation would contradict the current rules in light of the fact that CMRS, including PCS, are regulated services. The Commission should either clarify the application of the Part 64 accounting safeguards to regulated CMRS services as described above or delete the discussion in paragraph 218 of accounting safeguards which heretofore have applied only when a regulated entity provides both regulated and nonregulated services and when regulated affiliates have transactions with nonregulated affiliates.

When we file our PCS Safeguards Plan that is required prior to the commencement of PCS service,⁹ we will provide further information on the accounting plan our PCS subsidiary will follow, including affiliate transaction guidelines between the PCS subsidiary and Pacific Bell. Likewise, any LEC offering

⁹ Second Report and Order, para. 115,n.96.

PCS on a fully integrated basis should describe in its PCS safeguards plan its proposed accounting treatment.

II. PART 32 SHOULD NOT APPLY TO A SUBSIDIARY OF A LEC THAT PROVIDES CMRS

Pacific Bell urges the Commission to also clarify that a subsidiary of a LEC providing CMRS is not required to adopt the Part 32 Uniform System of Accounts.

The Commission has already decided not to exercise its authority under Sections 219 and 220 of the Communications Act with respect to CMRS providers which are not associated with LECs.¹⁰ Thus, competitors of a LEC's subsidiary are not required to use Part 32 accounting methods. A CMRS subsidiary of a LEC should not be subject to an account structure that does not apply to its competitors.

There is no need for requiring a specific chart of accounts for the CMRS subsidiary of a LEC. By virtue of being a separate subsidiary, all of its costs are already separated from other regulated costs of the LEC. Moreover, the Part 32 Uniform System of Accounts is not designed to deal with issues of cross-subsidy. We respectfully request that the Commission clarify that the Part 32 Uniform System of Accounts must be used by the LEC, but not by its CMRS subsidiary.

¹⁰ Order, paras. 192-193; In the Matter of Further Forbearance From Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94-33, Notice of Proposed Rulemaking, released May 4, 1994, para. 11.

II. CONCLUSION

For the reasons described herein, the Commission should clarify or reconsider and rescind that part of its Order which implies Part 64 accounting safeguards for non-regulated services apply to regulated commercial mobile services including PCS and should clarify that Part 32 Uniform System of Accounts does not apply to subsidiaries of LECs providing CMRS.

Respectfully submitted,

PACIFIC BELL



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Date: May 19, 1994